

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
WORCESTER CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

DANIEL R. MAROLD, an individual d.b.a.
CHILL6,

Defendant.

No. 22-cv-11773-MRG

UNITED STATES OF AMERICA’S RENEWED MOTION FOR DEFAULT

In accordance with Fed. R. Civ. P. 55(a), the United States hereby submits this motion renewing its request that the clerk enter a default against the defendant, Daniel R. Marold, an individual doing business as Chill6, in the above captioned matter. The government contends a default is warranted in this case because Mr. Marold has failed to file a timely answer or responsive pleading to the government’s complaint and defend against the government’s case, even after the Court provided Mr. Marold additional time to do so. *See* Fed. R. Civ. P. 55(a) (“when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default”); *see also* Dkt. No. 18.

The United States filed a Complaint, and an Amended Complaint, in this Court on October 17, 2022, seeking to permanently enjoin and restrain Mr. Marold from violating specific provisions of the Federal Food, Drug, and Cosmetic Act. *See* 21 U.S.C. §§ 331(a) & (d). The United States properly served the Amended Complaint and summons on him by FedEx on October 20 and Mr. Marold confirmed receipt. *See* Dkt. No. 10, Declaration of U.S. Dept. of Justice Trial Attorney

Manu J. Sebastian, and Fed. R. Civ. P. 4(e)(2)(B). In accordance with the Local Rules of the United States District Court for the District of Massachusetts, the United States returned the summons with proof of service within 90 days of filing the Amended Complaint and the summons. *See* L.R., D. Mass 4.1(a). Pursuant to Fed. R. Civ. P. 12(a)(1)(A)(i), Mr. Marold was required to serve an answer to the government's Amended Complaint by November 10, 2022 – 21 days after service.

More than 150 days have passed since the government served Mr. Marold with the Amended Complaint and summons. *See* Dkt. No. 10. In light of Mr. Marold's pro se status, and in good faith, the United States waited additional time, well beyond November 10, 2022, to determine whether he would file a response to the government's Amended Complaint, before filing its initial Motion for Entry of Default on February 17, 2023. On February 21, 2023, default was entered. Mr. Marold filed a Motion to Vacate Default on March 1, 2023, which the government opposed. Similar to Mr. Marold's responses to the government's inquiries regarding whether he intended to answer the Amended Complaint, Mr. Marold claimed that he had answered the Amended Complaint by signing a unilaterally amended consent decree which the government has previously informed him it would not accept. *See* Dkt. No. 15. Mr. Marold's Motion to Vacate Default made no mention of an intention to file an actual answer, or a responsive pleading, as required under Federal Rule of Civil Procedure 12.

On March 10, 2023, the Honorable Judge Denise J. Casper granted the Motion to Vacate Default and ordered Mr. Marold to file an answer or other responsive pleading by March 24, 2023. The Court also advised that it did not anticipate further extensions as to the deadline. Despite Mr. Marold's obligation to inform himself of the Court's order, the government forwarded both the Court's order and its follow up correspondence with Judge Casper's clerk to Mr. Marold by email

to ensure he was aware of the Court's order for him to answer the Amended Complaint by the March 24, 2023, deadline. *See* Exhibit 1, March 10, 2023, Electronic Order; *see also* Exhibit 2, March 10, 2023, Email from the Clerk for the Honorable Judge Denise J. Casper.¹ On March 13, 2023, the case was reassigned to the Honorable Judge Margaret R. Guzman, sitting in Worcester, MA.

To date, Mr. Marold has failed to file an answer or responsive pleading in this case in accordance with Judge Casper's March 10, 2023, Order. *See* Exhibit 3, Copy of the Docket in *United States v. Daniel Marold, d/b/a Chill6*, 22-cv-11773-DJC. Accordingly, the government renews its request that the clerk for the Honorable Judge Margaret R. Guzman enter a default against Mr. Marold in this case. *See United States v. Rogers*, No. 18-cv-40081-DHH, 2018 WL 6381149 (D. Mass. Oct. 22, 2018) (granting default under Fed. R. Civ. P. 55(a) because defendant failed to file a responsive pleading or a notice of appearance by the deadline set by Fed. R. Civ. P. 12(a)(1)(A)(i)).

¹ The government sought clarification from the Court regarding its March 10, 2023, electronic order. After receiving the clarification, the government forwarded the email exchange to Mr. Marold so that he would have the benefit of the clarification as well.

CONCLUSION

For the reasons set forth above, the government renews its request that the clerk enter a default against the defendant under Fed. R. Civ. P. 55(a).

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
Civil Division

ARUN G. RAO
Deputy Assistant Attorney General

AMANDA LISKAMM
Director
Consumer Protection Branch

RACHAEL S. ROLLINS
UNITED STATES ATTORNEY

Dated: April 10, 2023

By: /s/ Steven T. Sharobem
Steven T. Sharobem
Assistant United States Attorney
John Joseph Moakley Courthouse
One Courthouse Way, Suite 9200
Boston, Massachusetts 02210
Tel: (617) 748-3355
steven.sharobem@usdoj.gov

Manu J. Sebastian
Trial Attorney
Consumer Protection Branch
Civil Division
U.S. Department of Justice
450 5th Street, N.W.
Washington, D.C. 20530
Tel: (202) 514-0515
Manu.j.sebastian@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that, on this 10th, day of April, 2023, the foregoing document, filed through the ECF system, will be sent via e-mail and certified mail to the defendant:

Daniel R. Marold
26 Valley Forge Circle
West Boylston, MA 01583
Dan28jam@hotmail.com

/s/ Steven T. Sharobem

Steven T. Sharobem